

Notice of Allowability

Application No.

09/505,619

Examiner

Yogesh C. Garg

Applicant(s)

KATZ ET AL.

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/6/2007 & Telephonic Interview on 5/21/07.
2. ☒ The allowed claim(s) is/are 172, 173, 175-177, 179-194 and 196-219.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited. (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material

5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413),
Paper No./Mail Date 5/21/2007.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

YOGESH C. GARG
PRIMARY EXAMINER
TECHNOLOGY CENTER 3600

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/6/2007 has been entered.

Response to Amendment

2. Applicant's amendment received on 3/6/2007 is entered. Claim 172 is amended and claim 174 is canceled. Claims 172-173, 175-177, 179-194 and 196-219 are pending for examination.

Response to Arguments

3. In view of the amendment to claim 172 and cancellation of claim 174, rejection of claims 172-177, 179-194 and 196-219 under 35 USC 112, first paragraph and Objection to Specification under 35 U.S.C. 132 (a) are withdrawn.

Applicant's arguments, see Remarks, pages 16-18, filed 3/6/2007, with respect to currently amended claims 172 have been fully considered and are persuasive. and therefore claims 172-173, 175-177, 179-194 and 196-219 are allowed.

EXAMINER'S AMENDMENT

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with the applicant's representative Mr. Raffi Gostanian on 5/21/2007.

The application has been amended as follows:

This listing of claims will replace all prior versions, and listings, of claims in the application.

Listing of the Claims

1-171 (cancelled).

172. (currently amended) A method for providing remote commerce consisting of offers of a good or a service to prospective customers as users of a system comprising the steps of:

establishing a remote communication between at least one of the users and the system for a purpose of a primary transaction for a requested service or repair,

obtaining primary transaction data with respect to the primary transaction, including an identity of the prospective customer and the purpose of the primary transaction as being a communication for one of the requested service or repair,

utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user,

utilizing at least in part the primary transaction data, including the purpose of the primary transaction as being a communication for one of the requested service or repair and the second data element, to determine at least a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction, wherein the new product is different than the requested service or repair, and

offering the new product to the prospective customer in lieu of the requested service or repair whereby the upsell serves to obviate the purpose for the primary transaction and the upsell is successful in providing the customer with the new product in replacement thereof.

173. (original) The method of claim 172 wherein the transaction type of the primary transaction differs from the transaction type of the upsell transaction.

174. (cancelled).

175. (original) The method of claim 173 wherein the primary transaction is a service transaction and the upsell transaction is a purchase transaction.

176. (original) The method of claim 172 wherein the primary transaction is a purchase transaction for a first good and the upsell transaction is a purchase transaction for a second good.

177. (original) The method of claim 173 wherein the primary transaction is a service transaction for a first good and the upsell transaction is a purchase transaction for a replacement for the first good.

178. (cancelled).

179. (previously presented) The method of claim 172 wherein the primary transaction is not consummated.

180. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a purchase transaction.

181. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is an informational inquiry.

182. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a service transaction.

183. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a sale transaction.

184. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is an inventory check.

185. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a status inquiry.

186. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is an order fulfillment inquiry.

187. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a comparison shopping inquiry.

188. (previously presented) The method of claim 172 wherein the purpose of the primary transaction is a credit check.

189. (previously presented) The method of claim 172 wherein time is utilized as a factor in determining the good or service to be offered.

190. (previously presented) The method of claim 189 wherein the time is the time of day.

191. (previously presented) The method of claim 189 wherein the time is the day of the week.

192. (previously presented) The method of claim 189 wherein the time is the day of the month.

193. (previously presented) The method of claim 172 wherein a factor in determining the good or service to be offered is proximity to a calendar event.

194. (previously presented) The method of claim 193 wherein the calendar event is user defined.

195. (cancelled).

196. (previously presented) The method of claim 172 wherein geographic identifier data of the user is used to determine an offer for a good or service.

197. (previously presented) The method of claim 196 wherein the geographic identifier data of the user is provided automatically.

198. (previously presented) The method of claim 196 wherein the geographic identifier data is provided by a carrier associated with the electronic communications device.

199. (previously presented) The method of claim 196 wherein the geographic identifier data is entered by the user.

200. (previously presented) The method of claim 172 wherein the identity of the good or service of the primary transaction is utilized in determining the prospective upsell.

201. (previously presented) The method of claim 172 wherein the identity of the good or service selected by the user during the primary transaction is utilized in determining the prospective upsell.

202. (previously presented) The method of claim 172 wherein a quality factor associated with the good or service is at least one factor in determining the good or service to be offered.

203. (previously presented) The method of claim 172 wherein the offer is made orally to the prospective customer.

204. (previously presented) The method of claim 172 wherein the offer is made visually to the prospective customer.

205. (previously presented) The method of claim 204 wherein the visual offer is static.

206. (previously presented) The method of claim 204 wherein the visual offer is dynamic.

207. (previously presented) The method of claim 204 wherein the visual offer includes a virtual reality display.

208. (previously presented) The method of claim 172 wherein the prospective customer registers to use the system.

209. (previously presented) The method of claim 208 wherein the prospective customer preregisters with the system prior to use.

210. (previously presented) The method of claim 208 wherein the registration includes input of information by the prospective customer.

211. (previously presented) The method of claim 208 wherein the prospective customer inputs information in response to questions.

212. (previously presented) The method of claim 172 further comprising applying at least one negative rule when the at least second good or service for prospective upsell to the prospective customer is determined.

213. (previously presented) The method of claim 212 wherein the negative rule includes not offering for upsell a good or service determined to already be possessed by the prospective customer.

214. (previously presented) The method of claim 212 wherein the negative rule includes not offering a good or service determined to have been previously purchased by the prospective customer.

215. (previously presented) The method of claim 212 wherein the negative rule includes not offering a good or service determined to have been previously offered to the prospective customer, but declined.

216. (previously presented) The method of claim 172 wherein the prospective customer may interact with a live operator.

217. (previously presented) The method of claim 172 wherein the prospective customer utilizes an electronic communications device to communication with the system, and wherein the is a telephone.

218. (previously presented) The method of claim 217 wherein the electronic communications device is a videophone.

219. (previously presented) The method of claim 217 wherein the electronic communications device is a computer.

220-272. (cancelled).

5. The following is an examiner's statement of reasons for allowance:

The prior art, either alone or combined, does not suggest or render obvious a computerized method, in a remote commerce environment, comprising, inter alia, the steps, as a whole:

establishing a remote communication between an user and a system for a purpose of a primary transaction for a requested service or repair, obtaining primary transaction data with respect to the primary transaction, including an identity of the prospective customer and the purpose of the primary transaction as being a communication for one of the requested service or repair, utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user, utilizing at least in part the primary transaction data, including the purpose of the primary transaction as being a communication for one of the requested service or repair and the second data element, determining a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction. such that the new product is different than the requested service or repair, and offering the new product to

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the prospective customer in lieu of the requested service or repair and thereby obviating the purpose for the primary transaction.

6. Discussion of most relevant Prior art:

Lynch et al. (US Patent 6,108,715), hereinafter, Lynch teaches establishing a communication between at least one of the users and the system for purpose of a primary transaction for a first good or service wherein the first good or service is travel related goods and services and is currently available at a time of the communication (see at least Figs 1, 2, 3 " 104- Receive Travel Request Information" and col.4, lines 13-18) and obtaining primary transaction data with respect to the primary transaction, including the identity of the prospective customer and the purpose of the primary transaction as being a communication for the good or service (see at least col.5, lines 7- col.8, line 44). Lynch does not disclose utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user, utilizing at least in part the primary transaction data, including the purpose of the primary transaction as being a communication for one of the requested service or repair and the second data element, determining a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction. such that the new product is different than the requested service or repair, and offering the new product to the prospective customer in lieu of the requested service or repair and thereby obviating the purpose for the primary transaction.

Perkins [Perkins, Ed; " Consumer Reports On Travel Careful shopping will avoid bait-and-switch promotions"; The Atlanta Constitution; Atlanta, Ga; Jan 4, 1995 extracted on Internet from Proquest Database] discloses offering alternative travel products at a higher price against the user's request for a low-ball price item as advertised to make more money but does not teach utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user, utilizing at least in part the primary transaction data, including the purpose of the primary transaction as being a communication for one of the requested service or repair and the second data element, determining a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction. such that the new product is different than the requested service or repair, and offering the new product to the prospective customer in lieu of the requested service or repair and thereby obviating the purpose for the primary transaction.

Wagner [Wagner, Lon (Staff Writer); Fry Fight As Fast-Food Chains Face Off With French Fries, We Weigh The Issue For You"; Virginian-Pilot, Norfolk, Va; April 06,1997 extracted on Internet from Proquest Database] in the field of selling food products teaches determining a second good or service being currently available, that is a "Supersize" or "Biggie" fries for prospective upsell to the prospective customer which is different from the first good or service, that is a request of which the purpose was to buy either a large or medium fries and offering the second item/service, that is a

"Supersize" or "Biggie" to the prospective customer in lieu of the first good or service, that is a large or medium order request whereby the upsell, that is the second good in the form of "Supersize" or "Biggie" serves to obviate the purpose for the primary transaction such that the first good or service, that is a large or medium order for fries is not offered to the prospective customer. Wagner's teachings are related to selling Food products manually and does not disclose utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user, utilizing at least in part the primary transaction data, including the purpose of the primary transaction as being a communication for one of the requested service or repair and the second data element, determining a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction. such that the new product is different than the requested service or repair, and offering the new product to the prospective customer in lieu of the requested service or repair and thereby obviating the purpose for the primary transaction.

Joseph (US Patent 5,878,401) teaches determining at least one alternative item to the prospective customer which is different than the first good or service and offering the item to the prospective customer in lieu of the first good or service (see at least col.2, lines 15-43). Joseph does not teach utilizing the identity of the prospective customer to obtain at least a second data element from a remote database relating to the user, utilizing at least in part the primary transaction data, including the purpose of

the primary transaction as being a communication for one of the requested service or repair and the second data element, determining a new product being currently available at the time of the communication for prospective upsell to the prospective customer in real time with the primary transaction. such that the new product is different than the requested service or repair, and offering the new product to the prospective customer in lieu of the requested service or repair and thereby obviating the purpose for the primary transaction.

7. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

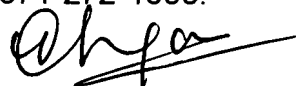
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yogesh C. Garg whose telephone number is 571-272-6756. The examiner can normally be reached on Increased Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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5/21/2007